

APPOINTMENT OF CHIEF JUSTICE OF INDIA: POLITY

NEWS: B.R. Gavai sworn in as Chief Justice of India

WHAT'S IN THE NEWS?

Justice Bhushan Ramkrishna Gavai has been sworn in as the 52nd Chief Justice of India, an appointment governed by convention based on seniority, as the Constitution does not prescribe a formal procedure for appointing the CJI.

Context:

- Justice Bhushan Ramkrishna Gavai has been sworn in by President Droupadi Murmu as the 52nd Chief Justice of India (CJI).
- This development brings focus on the constitutional, conventional, and procedural aspects related to the appointment, tenure, eligibility, and removal of the CJI.

Constitutional Provisions Regarding the Chief Justice of India:

1. Article 124(1):

- States that "There shall be a Supreme Court of India consisting of a Chief Justice of India and other judges."
- It does not prescribe any specific procedure for the appointment of the Chief Justice.

2. Article 124(2):

- Provides that every judge of the Supreme Court (including the CJI) shall be appointed by the President of India.
- The appointment is to be made after consultation with judges of the Supreme Court and High Courts, as deemed necessary by the President.

3. Absence of Constitutional Mechanism for CJI Appointment:

- No explicit provision exists in the Constitution for how the Chief Justice is to be appointed.
- Therefore, the process relies heavily on convention and judicial precedent.

Conventional Practice in Appointment of the CJI:

1. Principle of Seniority:

- The outgoing CJI recommends the name of the senior-most judge of the Supreme Court as the successor.
- Seniority is not based on age, but on:
 - The date of appointment as a judge in the Supreme Court.
 - In case of a tie, it is resolved based on seniority in High Court appointments or appointment as Chief Justice of a High Court.

2. Non-binding Recommendation:

- Although the President is not constitutionally bound to follow the recommendation, it is strictly adhered to as a convention.
- Deviation from this seniority principle is extremely rare and would invite political and judicial scrutiny.

Eligibility Criteria to be Appointed as a Supreme Court Judge (Including CJI):

As per Article 124(3), a person is qualified for appointment if they:

- Are a citizen of India, and
- Fulfil at least one of the following conditions:
 1. Have been a High Court judge for at least five years, or
 2. Have been an advocate in a High Court for at least 10 years, or
 3. Are, in the President's opinion, a distinguished jurist (this clause is rarely invoked).

Tenure and Retirement of the Chief Justice of India:

1. No Fixed Tenure:

- The Constitution does not specify a fixed term for the Chief Justice of India.
- The tenure is determined by the age of retirement and date of appointment.

2. Age of Retirement:

- As per Article 124(2), Supreme Court judges retire at the age of 65 years.
- Therefore, the tenure of a CJI depends on at what age he/she is appointed to the post.

Removal Procedure of the Chief Justice of India:

1. Constitutional Provision:

- Article 124(4): A judge (including the CJI) can only be removed by the President, based on a motion passed by both Houses of Parliament with:
 - Majority of the total membership, and
 - Two-thirds majority of members present and voting.

2. Grounds for Removal:

- Proven misbehaviour or incapacity.

3. Judges Inquiry Act, 1968 – Detailed Procedure:

- Step 1: A motion for removal can be introduced in either House, signed by:
 - 100 members in the Lok Sabha, or
 - 50 members in the Rajya Sabha.
- Step 2: The Speaker or Chairman may admit the motion and constitute a three-member inquiry committee:
 - One Supreme Court judge,
 - One Chief Justice of a High Court,
 - One eminent jurist.
- Step 3: If the committee finds the judge guilty, the motion is debated and voted on in both Houses.
- Step 4: If passed by the required majority in both Houses, the President issues an order of removal.

Conclusion:

- The appointment and removal of the Chief Justice of India is a blend of constitutional provisions and conventions.
- While the Constitution remains silent on the procedure for CJI appointment, the seniority convention has ensured continuity and impartiality.
- The rigorous removal process ensures judicial independence, which is a cornerstone of India's constitutional democracy.

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